

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

VERNON MITCHELL, #1095082,

Petitioner,

V.

HAROLD CLARKE,

Respondent.

Civil Action No. 1:12-cv-945-TSE-TRJ

REPORT AND RECOMMENDATION

Petitioner Vernon Mitchell, a Virginia inmate, filed a § 2254 petition for a writ of habeas corpus claiming that the Virginia Parole Board (VPB) violated his due process rights when it did not furnish him a copy of the parole eligibility criteria. The matter was referred to the undersigned magistrate judge for an evidentiary hearing, or other appropriate steps, to resolve the limited factual issue whether the parole eligibility criteria were available in the law library prior to petitioner's parole hearing on May 3, 2011 (no. 25).

Based on respondent's supplemental motion for summary judgment (nos. 30, 31) and affidavit in support from the Chairman of the Virginia Parole Board, William Muse, and petitioner's responsive brief (no. 36), the magistrate judge finds that there appears to be no need for an evidentiary hearing as this issue has been resolved by an appropriate remedy. Respondent has averred, and it is uncontested by petitioner, that petitioner has received an updated version of the VPB regulations and policies and that the VPB conducted an additional hearing on November 21, 2013 (nos. 36, 31 at Muse Aff. ¶ 4). Petitioner and his family were provided an opportunity by VPB to present evidence and arguments in support of parole relief. *Id.* On March 25, 2014, the VPB communicated to petitioner, by letter, its decision not to grant him

parole (no. 36 at ¶ 4).

Accordingly, petitioner now agrees that respondent has provided petitioner any and all opportunities for parole consideration that could have been granted by this Court (No. 36 at ¶ 5).

RECOMMENDATION

For these reasons, the magistrate judge finds that there is no need to conduct an evidentiary hearing and recommends that the court resolve this matter on summary judgment.

NOTICE

By means of the court's electronic filing system, the parties are notified as follows. Objections to this report and recommendation must be filed within fourteen (14) days of service on you of this report and recommendation. A failure to file timely objections to this report and recommendation waives appellate review of the substance of the report and recommendation and waives appellate review of a judgment based on this report and recommendation.

/s/

Thomas Rawles Jones, Jr.
United States Magistrate Judge

April 9, 2014

Alexandria, Virginia